



Sen. Don Harmon

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1 AMENDMENT TO HOUSE BILL 6202

2 AMENDMENT NO. _____. Amend House Bill 6202 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Power Agency Act is amended by
5 changing Sections 1-56 and 1-75 as follows:

6 (20 ILCS 3855/1-56)

7 Sec. 1-56. Illinois Power Agency Renewable Energy
8 Resources Fund.

9 (a) The Illinois Power Agency Renewable Energy Resources
10 Fund is created as a special fund in the State treasury.

11 (b) The Illinois Power Agency Renewable Energy Resources
12 Fund shall be administered by the Agency to procure renewable
13 energy resources. Prior to June 1, 2011, resources procured
14 pursuant to this Section shall be procured from facilities
15 located in Illinois, provided the resources are available from
16 those facilities. If resources are not available in Illinois,

1 then they shall be procured in states that adjoin Illinois. If
2 resources are not available in Illinois or in states that
3 adjoin Illinois, then they may be purchased elsewhere.
4 Beginning June 1, 2011, resources procured pursuant to this
5 Section shall be procured from facilities located in Illinois
6 or states that adjoin Illinois. If resources are not available
7 in Illinois or in states that adjoin Illinois, then they may be
8 procured elsewhere. To the extent available, at least 75% of
9 these renewable energy resources shall come from wind
10 generation. Of the renewable energy resources procured
11 pursuant to this Section at least the following specified
12 percentages shall come from photovoltaics on the following
13 schedule: 0.5% by June 1, 2012; 1.5% by June 1, 2013; 3% by
14 June 1, 2014; and 6% by June 1, 2015 and thereafter and,
15 ~~starting June 1, 2015, at least 6% of the renewable energy~~
16 ~~resources used to meet these standards shall come from solar~~
17 ~~photovoltaics.~~

18 (c) The Agency shall procure renewable energy resources at
19 least once each year in conjunction with a procurement event
20 for electric utilities required to comply with Section 1-75 of
21 the Act and shall, whenever possible, enter into long-term
22 contracts.

23 (d) The price paid to procure renewable energy credits
24 using monies from the Illinois Power Agency Renewable Energy
25 Resources Fund shall not exceed the winning bid prices paid for
26 like resources procured for electric utilities required to

1 comply with Section 1-75 of this Act.

2 (e) All renewable energy credits procured using monies from
3 the Illinois Power Agency Renewable Energy Resources Fund shall
4 be permanently retired.

5 (f) The procurement process described in this Section is
6 exempt from the requirements of the Illinois Procurement Code,
7 pursuant to Section 20-10 of that Code.

8 (g) All disbursements from the Illinois Power Agency
9 Renewable Energy Resources Fund shall be made only upon
10 warrants of the Comptroller drawn upon the Treasurer as
11 custodian of the Fund upon vouchers signed by the Director or
12 by the person or persons designated by the Director for that
13 purpose. The Comptroller is authorized to draw the warrant upon
14 vouchers so signed. The Treasurer shall accept all warrants so
15 signed and shall be released from liability for all payments
16 made on those warrants.

17 (h) The Illinois Power Agency Renewable Energy Resources
18 Fund shall not be subject to sweeps, administrative charges, or
19 chargebacks, including, but not limited to, those authorized
20 under Section 8h of the State Finance Act, that would in any
21 way result in the transfer of any funds from this Fund to any
22 other fund of this State or in having any such funds utilized
23 for any purpose other than the express purposes set forth in
24 this Section.

25 (Source: P.A. 96-159, eff. 8-10-09.)

1 (20 ILCS 3855/1-75)

2 Sec. 1-75. Planning and Procurement Bureau. The Planning
3 and Procurement Bureau has the following duties and
4 responsibilities:

5 (a) The Planning and Procurement Bureau shall each
6 year, beginning in 2008, develop procurement plans and
7 conduct competitive procurement processes in accordance
8 with the requirements of Section 16-111.5 of the Public
9 Utilities Act for the eligible retail customers of electric
10 utilities that on December 31, 2005 provided electric
11 service to at least 100,000 customers in Illinois. For the
12 purposes of this Section, the term "eligible retail
13 customers" has the same definition as found in Section
14 16-111.5(a) of the Public Utilities Act.

15 (1) The Agency shall each year, beginning in 2008,
16 as needed, issue a request for qualifications for
17 experts or expert consulting firms to develop the
18 procurement plans in accordance with Section 16-111.5
19 of the Public Utilities Act. In order to qualify an
20 expert or expert consulting firm must have:

21 (A) direct previous experience assembling
22 large-scale power supply plans or portfolios for
23 end-use customers;

24 (B) an advanced degree in economics,
25 mathematics, engineering, risk management, or a
26 related area of study;

1 (C) 10 years of experience in the electricity
2 sector, including managing supply risk;

3 (D) expertise in wholesale electricity market
4 rules, including those established by the Federal
5 Energy Regulatory Commission and regional
6 transmission organizations;

7 (E) expertise in credit protocols and
8 familiarity with contract protocols;

9 (F) adequate resources to perform and fulfill
10 the required functions and responsibilities; and

11 (G) the absence of a conflict of interest and
12 inappropriate bias for or against potential
13 bidders or the affected electric utilities.

14 (2) The Agency shall each year, as needed, issue a
15 request for qualifications for a procurement
16 administrator to conduct the competitive procurement
17 processes in accordance with Section 16-111.5 of the
18 Public Utilities Act. In order to qualify an expert or
19 expert consulting firm must have:

20 (A) direct previous experience administering a
21 large-scale competitive procurement process;

22 (B) an advanced degree in economics,
23 mathematics, engineering, or a related area of
24 study;

25 (C) 10 years of experience in the electricity
26 sector, including risk management experience;

1 (D) expertise in wholesale electricity market
2 rules, including those established by the Federal
3 Energy Regulatory Commission and regional
4 transmission organizations;

5 (E) expertise in credit and contract
6 protocols;

7 (F) adequate resources to perform and fulfill
8 the required functions and responsibilities; and

9 (G) the absence of a conflict of interest and
10 inappropriate bias for or against potential
11 bidders or the affected electric utilities.

12 (3) The Agency shall provide affected utilities
13 and other interested parties with the lists of
14 qualified experts or expert consulting firms
15 identified through the request for qualifications
16 processes that are under consideration to develop the
17 procurement plans and to serve as the procurement
18 administrator. The Agency shall also provide each
19 qualified expert's or expert consulting firm's
20 response to the request for qualifications. All
21 information provided under this subparagraph shall
22 also be provided to the Commission. The Agency may
23 provide by rule for fees associated with supplying the
24 information to utilities and other interested parties.
25 These parties shall, within 5 business days, notify the
26 Agency in writing if they object to any experts or

1 expert consulting firms on the lists. Objections shall
2 be based on:

3 (A) failure to satisfy qualification criteria;

4 (B) identification of a conflict of interest;

5 or

6 (C) evidence of inappropriate bias for or
7 against potential bidders or the affected
8 utilities.

9 The Agency shall remove experts or expert
10 consulting firms from the lists within 10 days if there
11 is a reasonable basis for an objection and provide the
12 updated lists to the affected utilities and other
13 interested parties. If the Agency fails to remove an
14 expert or expert consulting firm from a list, an
15 objecting party may seek review by the Commission
16 within 5 days thereafter by filing a petition, and the
17 Commission shall render a ruling on the petition within
18 10 days. There is no right of appeal of the
19 Commission's ruling.

20 (4) The Agency shall issue requests for proposals
21 to the qualified experts or expert consulting firms to
22 develop a procurement plan for the affected utilities
23 and to serve as procurement administrator.

24 (5) The Agency shall select an expert or expert
25 consulting firm to develop procurement plans based on
26 the proposals submitted and shall award one-year

1 contracts to those selected with an option for the
2 Agency for a one-year renewal.

3 (6) The Agency shall select an expert or expert
4 consulting firm, with approval of the Commission, to
5 serve as procurement administrator based on the
6 proposals submitted. If the Commission rejects, within
7 5 days, the Agency's selection, the Agency shall submit
8 another recommendation within 3 days based on the
9 proposals submitted. The Agency shall award a one-year
10 contract to the expert or expert consulting firm so
11 selected with Commission approval with an option for
12 the Agency for a one-year renewal.

13 (b) The experts or expert consulting firms retained by
14 the Agency shall, as appropriate, prepare procurement
15 plans, and conduct a competitive procurement process as
16 prescribed in Section 16-111.5 of the Public Utilities Act,
17 to ensure adequate, reliable, affordable, efficient, and
18 environmentally sustainable electric service at the lowest
19 total cost over time, taking into account any benefits of
20 price stability, for eligible retail customers of electric
21 utilities that on December 31, 2005 provided electric
22 service to at least 100,000 customers in the State of
23 Illinois.

24 (c) Renewable portfolio standard.

25 (1) The procurement plans shall include
26 cost-effective renewable energy resources. A minimum

1 percentage of each utility's total supply to serve the
2 load of eligible retail customers, as defined in
3 Section 16-111.5(a) of the Public Utilities Act,
4 procured for each of the following years shall be
5 generated from cost-effective renewable energy
6 resources: at least 2% by June 1, 2008; at least 4% by
7 June 1, 2009; at least 5% by June 1, 2010; at least 6%
8 by June 1, 2011; at least 7% by June 1, 2012; at least
9 8% by June 1, 2013; at least 9% by June 1, 2014; at
10 least 10% by June 1, 2015; and increasing by at least
11 1.5% each year thereafter to at least 25% by June 1,
12 2025. To the extent that it is available, at least 75%
13 of the renewable energy resources used to meet these
14 standards shall come from wind generation and,
15 beginning on June 1, 2011 2015, at least the following
16 percentages ~~6%~~ of the renewable energy resources used
17 to meet these standards shall come from photovoltaics
18 on the following schedule: 0.5% by June 1, 2012, 1.5%
19 by June 1, 2013; 3% by June 1, 2014; and 6% by June 1,
20 2015 and thereafter. For purposes of this subsection
21 (c), "cost-effective" means that the costs of
22 procuring renewable energy resources do not cause the
23 limit stated in paragraph (2) of this subsection (c) to
24 be exceeded and do not exceed benchmarks based on
25 market prices for renewable energy resources in the
26 region, which shall be developed by the procurement

1 administrator, in consultation with the Commission
2 staff, Agency staff, and the procurement monitor and
3 shall be subject to Commission review and approval.

4 (2) For purposes of this subsection (c), the
5 required procurement of cost-effective renewable
6 energy resources for a particular year shall be
7 measured as a percentage of the actual amount of
8 electricity (megawatt-hours) supplied by the electric
9 utility to eligible retail customers in the planning
10 year ending immediately prior to the procurement. For
11 purposes of this subsection (c), the amount paid per
12 kilowatthour means the total amount paid for electric
13 service expressed on a per kilowatthour basis. For
14 purposes of this subsection (c), the total amount paid
15 for electric service includes without limitation
16 amounts paid for supply, transmission, distribution,
17 surcharges, and add-on taxes.

18 Notwithstanding the requirements of this
19 subsection (c), the total of renewable energy
20 resources procured pursuant to the procurement plan
21 for any single year shall be reduced by an amount
22 necessary to limit the annual estimated average net
23 increase due to the costs of these resources included
24 in the amounts paid by eligible retail customers in
25 connection with electric service to:

26 (A) in 2008, no more than 0.5% of the amount

1 paid per kilowatthour by those customers during
2 the year ending May 31, 2007;

3 (B) in 2009, the greater of an additional 0.5%
4 of the amount paid per kilowatthour by those
5 customers during the year ending May 31, 2008 or 1%
6 of the amount paid per kilowatthour by those
7 customers during the year ending May 31, 2007;

8 (C) in 2010, the greater of an additional 0.5%
9 of the amount paid per kilowatthour by those
10 customers during the year ending May 31, 2009 or
11 1.5% of the amount paid per kilowatthour by those
12 customers during the year ending May 31, 2007;

13 (D) in 2011, the greater of an additional 0.5%
14 of the amount paid per kilowatthour by those
15 customers during the year ending May 31, 2010 or 2%
16 of the amount paid per kilowatthour by those
17 customers during the year ending May 31, 2007; and

18 (E) thereafter, the amount of renewable energy
19 resources procured pursuant to the procurement
20 plan for any single year shall be reduced by an
21 amount necessary to limit the estimated average
22 net increase due to the cost of these resources
23 included in the amounts paid by eligible retail
24 customers in connection with electric service to
25 no more than the greater of 2.015% of the amount
26 paid per kilowatthour by those customers during

1 the year ending May 31, 2007 or the incremental
2 amount per kilowatthour paid for these resources
3 in 2011.

4 No later than June 30, 2011, the Commission shall
5 review the limitation on the amount of renewable energy
6 resources procured pursuant to this subsection (c) and
7 report to the General Assembly its findings as to
8 whether that limitation unduly constrains the
9 procurement of cost-effective renewable energy
10 resources.

11 (3) Through June 1, 2011, renewable energy
12 resources shall be counted for the purpose of meeting
13 the renewable energy standards set forth in paragraph
14 (1) of this subsection (c) only if they are generated
15 from facilities located in the State, provided that
16 cost-effective renewable energy resources are
17 available from those facilities. If those
18 cost-effective resources are not available in
19 Illinois, they shall be procured in states that adjoin
20 Illinois and may be counted towards compliance. If
21 those cost-effective resources are not available in
22 Illinois or in states that adjoin Illinois, they shall
23 be purchased elsewhere and shall be counted towards
24 compliance. After June 1, 2011, cost-effective
25 renewable energy resources located in Illinois and in
26 states that adjoin Illinois may be counted towards

1 compliance with the standards set forth in paragraph
2 (1) of this subsection (c). If those cost-effective
3 resources are not available in Illinois or in states
4 that adjoin Illinois, they shall be purchased
5 elsewhere and shall be counted towards compliance.

6 (4) The electric utility shall retire all
7 renewable energy credits used to comply with the
8 standard.

9 (5) Beginning with the year commencing June 1,
10 2010, an electric utility subject to this subsection
11 (c) shall apply the lesser of the maximum alternative
12 compliance payment rate or the most recent estimated
13 alternative compliance payment rate for its service
14 territory for the corresponding compliance period,
15 established pursuant to subsection (d) of Section
16 16-115D of the Public Utilities Act to its retail
17 customers that take service pursuant to the electric
18 utility's hourly pricing tariff or tariffs. The
19 electric utility shall retain all amounts collected as
20 a result of the application of the alternative
21 compliance payment rate or rates to such customers,
22 and, beginning in 2011, the utility shall include in
23 the information provided under item (1) of subsection
24 (d) of Section 16-111.5 of the Public Utilities Act the
25 amounts collected under the alternative compliance
26 payment rate or rates for the prior year ending May 31.

1 Notwithstanding any limitation on the procurement of
2 renewable energy resources imposed by item (2) of this
3 subsection (c), the Agency shall increase its spending
4 on the purchase of renewable energy resources to be
5 procured by the electric utility for the next plan year
6 by an amount equal to the amounts collected by the
7 utility under the alternative compliance payment rate
8 or rates in the prior year ending May 31.

9 (d) Clean coal portfolio standard.

10 (1) The procurement plans shall include electricity
11 generated using clean coal. Each utility shall enter into
12 one or more sourcing agreements with the initial clean coal
13 facility, as provided in paragraph (3) of this subsection
14 (d), covering electricity generated by the initial clean
15 coal facility representing at least 5% of each utility's
16 total supply to serve the load of eligible retail customers
17 in 2015 and each year thereafter, as described in paragraph
18 (3) of this subsection (d), subject to the limits specified
19 in paragraph (2) of this subsection (d). It is the goal of
20 the State that by January 1, 2025, 25% of the electricity
21 used in the State shall be generated by cost-effective
22 clean coal facilities. For purposes of this subsection (d),
23 "cost-effective" means that the expenditures pursuant to
24 such sourcing agreements do not cause the limit stated in
25 paragraph (2) of this subsection (d) to be exceeded and do
26 not exceed cost-based benchmarks, which shall be developed

1 to assess all expenditures pursuant to such sourcing
2 agreements covering electricity generated by clean coal
3 facilities, other than the initial clean coal facility, by
4 the procurement administrator, in consultation with the
5 Commission staff, Agency staff, and the procurement
6 monitor and shall be subject to Commission review and
7 approval.

8 (A) A utility party to a sourcing agreement shall
9 immediately retire any emission credits that it
10 receives in connection with the electricity covered by
11 such agreement.

12 (B) Utilities shall maintain adequate records
13 documenting the purchases under the sourcing agreement
14 to comply with this subsection (d) and shall file an
15 accounting with the load forecast that must be filed
16 with the Agency by July 15 of each year, in accordance
17 with subsection (d) of Section 16-111.5 of the Public
18 Utilities Act.

19 (C) A utility shall be deemed to have complied with
20 the clean coal portfolio standard specified in this
21 subsection (d) if the utility enters into a sourcing
22 agreement as required by this subsection (d).

23 (2) For purposes of this subsection (d), the required
24 execution of sourcing agreements with the initial clean
25 coal facility for a particular year shall be measured as a
26 percentage of the actual amount of electricity

1 (megawatt-hours) supplied by the electric utility to
2 eligible retail customers in the planning year ending
3 immediately prior to the agreement's execution. For
4 purposes of this subsection (d), the amount paid per
5 kilowatthour means the total amount paid for electric
6 service expressed on a per kilowatthour basis. For purposes
7 of this subsection (d), the total amount paid for electric
8 service includes without limitation amounts paid for
9 supply, transmission, distribution, surcharges and add-on
10 taxes.

11 Notwithstanding the requirements of this subsection
12 (d), the total amount paid under sourcing agreements with
13 clean coal facilities pursuant to the procurement plan for
14 any given year shall be reduced by an amount necessary to
15 limit the annual estimated average net increase due to the
16 costs of these resources included in the amounts paid by
17 eligible retail customers in connection with electric
18 service to:

19 (A) in 2010, no more than 0.5% of the amount
20 paid per kilowatthour by those customers during
21 the year ending May 31, 2009;

22 (B) in 2011, the greater of an additional 0.5%
23 of the amount paid per kilowatthour by those
24 customers during the year ending May 31, 2010 or 1%
25 of the amount paid per kilowatthour by those
26 customers during the year ending May 31, 2009;

1 (C) in 2012, the greater of an additional 0.5%
2 of the amount paid per kilowatthour by those
3 customers during the year ending May 31, 2011 or
4 1.5% of the amount paid per kilowatthour by those
5 customers during the year ending May 31, 2009;

6 (D) in 2013, the greater of an additional 0.5%
7 of the amount paid per kilowatthour by those
8 customers during the year ending May 31, 2012 or 2%
9 of the amount paid per kilowatthour by those
10 customers during the year ending May 31, 2009; and

11 (E) thereafter, the total amount paid under
12 sourcing agreements with clean coal facilities
13 pursuant to the procurement plan for any single
14 year shall be reduced by an amount necessary to
15 limit the estimated average net increase due to the
16 cost of these resources included in the amounts
17 paid by eligible retail customers in connection
18 with electric service to no more than the greater
19 of (i) 2.015% of the amount paid per kilowatthour
20 by those customers during the year ending May 31,
21 2009 or (ii) the incremental amount per
22 kilowatthour paid for these resources in 2013.
23 These requirements may be altered only as provided
24 by statute. No later than June 30, 2015, the
25 Commission shall review the limitation on the
26 total amount paid under sourcing agreements, if

1 any, with clean coal facilities pursuant to this
2 subsection (d) and report to the General Assembly
3 its findings as to whether that limitation unduly
4 constrains the amount of electricity generated by
5 cost-effective clean coal facilities that is
6 covered by sourcing agreements.

7 (3) Initial clean coal facility. In order to promote
8 development of clean coal facilities in Illinois, each
9 electric utility subject to this Section shall execute a
10 sourcing agreement to source electricity from a proposed
11 clean coal facility in Illinois (the "initial clean coal
12 facility") that will have a nameplate capacity of at least
13 500 MW when commercial operation commences, that has a
14 final Clean Air Act permit on the effective date of this
15 amendatory Act of the 95th General Assembly, and that will
16 meet the definition of clean coal facility in Section 1-10
17 of this Act when commercial operation commences. The
18 sourcing agreements with this initial clean coal facility
19 shall be subject to both approval of the initial clean coal
20 facility by the General Assembly and satisfaction of the
21 requirements of paragraph (4) of this subsection (d) and
22 shall be executed within 90 days after any such approval by
23 the General Assembly. The Agency and the Commission shall
24 have authority to inspect all books and records associated
25 with the initial clean coal facility during the term of
26 such a sourcing agreement. A utility's sourcing agreement

1 for electricity produced by the initial clean coal facility
2 shall include:

3 (A) a formula contractual price (the "contract
4 price") approved pursuant to paragraph (4) of this
5 subsection (d), which shall:

6 (i) be determined using a cost of service
7 methodology employing either a level or deferred
8 capital recovery component, based on a capital
9 structure consisting of 45% equity and 55% debt,
10 and a return on equity as may be approved by the
11 Federal Energy Regulatory Commission, which in any
12 case may not exceed the lower of 11.5% or the rate
13 of return approved by the General Assembly
14 pursuant to paragraph (4) of this subsection (d);
15 and

16 (ii) provide that all miscellaneous net
17 revenue, including but not limited to net revenue
18 from the sale of emission allowances, if any,
19 substitute natural gas, if any, grants or other
20 support provided by the State of Illinois or the
21 United States Government, firm transmission
22 rights, if any, by-products produced by the
23 facility, energy or capacity derived from the
24 facility and not covered by a sourcing agreement
25 pursuant to paragraph (3) of this subsection (d) or
26 item (5) of subsection (d) of Section 16-115 of the

1 Public Utilities Act, whether generated from the
2 synthesis gas derived from coal, from SNG, or from
3 natural gas, shall be credited against the revenue
4 requirement for this initial clean coal facility;

5 (B) power purchase provisions, which shall:

6 (i) provide that the utility party to such
7 sourcing agreement shall pay the contract price
8 for electricity delivered under such sourcing
9 agreement;

10 (ii) require delivery of electricity to the
11 regional transmission organization market of the
12 utility that is party to such sourcing agreement;

13 (iii) require the utility party to such
14 sourcing agreement to buy from the initial clean
15 coal facility in each hour an amount of energy
16 equal to all clean coal energy made available from
17 the initial clean coal facility during such hour
18 times a fraction, the numerator of which is such
19 utility's retail market sales of electricity
20 (expressed in kilowatthours sold) in the State
21 during the prior calendar month and the
22 denominator of which is the total retail market
23 sales of electricity (expressed in kilowatthours
24 sold) in the State by utilities during such prior
25 month and the sales of electricity (expressed in
26 kilowatthours sold) in the State by alternative

1 retail electric suppliers during such prior month
2 that are subject to the requirements of this
3 subsection (d) and paragraph (5) of subsection (d)
4 of Section 16-115 of the Public Utilities Act,
5 provided that the amount purchased by the utility
6 in any year will be limited by paragraph (2) of
7 this subsection (d); and

8 (iv) be considered pre-existing contracts in
9 such utility's procurement plans for eligible
10 retail customers;

11 (C) contract for differences provisions, which
12 shall:

13 (i) require the utility party to such sourcing
14 agreement to contract with the initial clean coal
15 facility in each hour with respect to an amount of
16 energy equal to all clean coal energy made
17 available from the initial clean coal facility
18 during such hour times a fraction, the numerator of
19 which is such utility's retail market sales of
20 electricity (expressed in kilowatthours sold) in
21 the utility's service territory in the State
22 during the prior calendar month and the
23 denominator of which is the total retail market
24 sales of electricity (expressed in kilowatthours
25 sold) in the State by utilities during such prior
26 month and the sales of electricity (expressed in

1 kilowatthours sold) in the State by alternative
2 retail electric suppliers during such prior month
3 that are subject to the requirements of this
4 subsection (d) and paragraph (5) of subsection (d)
5 of Section 16-115 of the Public Utilities Act,
6 provided that the amount paid by the utility in any
7 year will be limited by paragraph (2) of this
8 subsection (d);

9 (ii) provide that the utility's payment
10 obligation in respect of the quantity of
11 electricity determined pursuant to the preceding
12 clause (i) shall be limited to an amount equal to
13 (1) the difference between the contract price
14 determined pursuant to subparagraph (A) of
15 paragraph (3) of this subsection (d) and the
16 day-ahead price for electricity delivered to the
17 regional transmission organization market of the
18 utility that is party to such sourcing agreement
19 (or any successor delivery point at which such
20 utility's supply obligations are financially
21 settled on an hourly basis) (the "reference
22 price") on the day preceding the day on which the
23 electricity is delivered to the initial clean coal
24 facility busbar, multiplied by (2) the quantity of
25 electricity determined pursuant to the preceding
26 clause (i); and

1 (iii) not require the utility to take physical
2 delivery of the electricity produced by the
3 facility;

4 (D) general provisions, which shall:

5 (i) specify a term of no more than 30 years,
6 commencing on the commercial operation date of the
7 facility;

8 (ii) provide that utilities shall maintain
9 adequate records documenting purchases under the
10 sourcing agreements entered into to comply with
11 this subsection (d) and shall file an accounting
12 with the load forecast that must be filed with the
13 Agency by July 15 of each year, in accordance with
14 subsection (d) of Section 16-111.5 of the Public
15 Utilities Act.

16 (iii) provide that all costs associated with
17 the initial clean coal facility will be
18 periodically reported to the Federal Energy
19 Regulatory Commission and to purchasers in
20 accordance with applicable laws governing
21 cost-based wholesale power contracts;

22 (iv) permit the Illinois Power Agency to
23 assume ownership of the initial clean coal
24 facility, without monetary consideration and
25 otherwise on reasonable terms acceptable to the
26 Agency, if the Agency so requests no less than 3

1 years prior to the end of the stated contract term;

2 (v) require the owner of the initial clean coal
3 facility to provide documentation to the
4 Commission each year, starting in the facility's
5 first year of commercial operation, accurately
6 reporting the quantity of carbon emissions from
7 the facility that have been captured and
8 sequestered and report any quantities of carbon
9 released from the site or sites at which carbon
10 emissions were sequestered in prior years, based
11 on continuous monitoring of such sites. If, in any
12 year after the first year of commercial operation,
13 the owner of the facility fails to demonstrate that
14 the initial clean coal facility captured and
15 sequestered at least 50% of the total carbon
16 emissions that the facility would otherwise emit
17 or that sequestration of emissions from prior
18 years has failed, resulting in the release of
19 carbon dioxide into the atmosphere, the owner of
20 the facility must offset excess emissions. Any
21 such carbon offsets must be permanent, additional,
22 verifiable, real, located within the State of
23 Illinois, and legally and practicably enforceable.
24 The cost of such offsets for the facility that are
25 not recoverable shall not exceed \$15 million in any
26 given year. No costs of any such purchases of

1 carbon offsets may be recovered from a utility or
2 its customers. All carbon offsets purchased for
3 this purpose and any carbon emission credits
4 associated with sequestration of carbon from the
5 facility must be permanently retired. The initial
6 clean coal facility shall not forfeit its
7 designation as a clean coal facility if the
8 facility fails to fully comply with the applicable
9 carbon sequestration requirements in any given
10 year, provided the requisite offsets are
11 purchased. However, the Attorney General, on
12 behalf of the People of the State of Illinois, may
13 specifically enforce the facility's sequestration
14 requirement and the other terms of this contract
15 provision. Compliance with the sequestration
16 requirements and offset purchase requirements
17 specified in paragraph (3) of this subsection (d)
18 shall be reviewed annually by an independent
19 expert retained by the owner of the initial clean
20 coal facility, with the advance written approval
21 of the Attorney General. The Commission may, in the
22 course of the review specified in item (vii),
23 reduce the allowable return on equity for the
24 facility if the facility wilfully fails to comply
25 with the carbon capture and sequestration
26 requirements set forth in this item (v);

1 (vi) include limits on, and accordingly
2 provide for modification of, the amount the
3 utility is required to source under the sourcing
4 agreement consistent with paragraph (2) of this
5 subsection (d);

6 (vii) require Commission review: (1) to
7 determine the justness, reasonableness, and
8 prudence of the inputs to the formula referenced in
9 subparagraphs (A) (i) through (A) (iii) of paragraph
10 (3) of this subsection (d), prior to an adjustment
11 in those inputs including, without limitation, the
12 capital structure and return on equity, fuel
13 costs, and other operations and maintenance costs
14 and (2) to approve the costs to be passed through
15 to customers under the sourcing agreement by which
16 the utility satisfies its statutory obligations.
17 Commission review shall occur no less than every 3
18 years, regardless of whether any adjustments have
19 been proposed, and shall be completed within 9
20 months;

21 (viii) limit the utility's obligation to such
22 amount as the utility is allowed to recover through
23 tariffs filed with the Commission, provided that
24 neither the clean coal facility nor the utility
25 waives any right to assert federal pre-emption or
26 any other argument in response to a purported

1 disallowance of recovery costs;

2 (ix) limit the utility's or alternative retail
3 electric supplier's obligation to incur any
4 liability until such time as the facility is in
5 commercial operation and generating power and
6 energy and such power and energy is being delivered
7 to the facility busbar;

8 (x) provide that the owner or owners of the
9 initial clean coal facility, which is the
10 counterparty to such sourcing agreement, shall
11 have the right from time to time to elect whether
12 the obligations of the utility party thereto shall
13 be governed by the power purchase provisions or the
14 contract for differences provisions;

15 (xi) append documentation showing that the
16 formula rate and contract, insofar as they relate
17 to the power purchase provisions, have been
18 approved by the Federal Energy Regulatory
19 Commission pursuant to Section 205 of the Federal
20 Power Act;

21 (xii) provide that any changes to the terms of
22 the contract, insofar as such changes relate to the
23 power purchase provisions, are subject to review
24 under the public interest standard applied by the
25 Federal Energy Regulatory Commission pursuant to
26 Sections 205 and 206 of the Federal Power Act; and

1 (xiii) conform with customary lender
2 requirements in power purchase agreements used as
3 the basis for financing non-utility generators.

4 (4) Effective date of sourcing agreements with the
5 initial clean coal facility. Any proposed sourcing
6 agreement with the initial clean coal facility shall not
7 become effective unless the following reports are prepared
8 and submitted and authorizations and approvals obtained:

9 (i) Facility cost report. The owner of the
10 initial clean coal facility shall submit to the
11 Commission, the Agency, and the General Assembly a
12 front-end engineering and design study, a facility
13 cost report, method of financing (including but
14 not limited to structure and associated costs),
15 and an operating and maintenance cost quote for the
16 facility (collectively "facility cost report"),
17 which shall be prepared in accordance with the
18 requirements of this paragraph (4) of subsection
19 (d) of this Section, and shall provide the
20 Commission and the Agency access to the work
21 papers, relied upon documents, and any other
22 backup documentation related to the facility cost
23 report.

24 (ii) Commission report. Within 6 months
25 following receipt of the facility cost report, the
26 Commission, in consultation with the Agency, shall

1 submit a report to the General Assembly setting
2 forth its analysis of the facility cost report.
3 Such report shall include, but not be limited to, a
4 comparison of the costs associated with
5 electricity generated by the initial clean coal
6 facility to the costs associated with electricity
7 generated by other types of generation facilities,
8 an analysis of the rate impacts on residential and
9 small business customers over the life of the
10 sourcing agreements, and an analysis of the
11 likelihood that the initial clean coal facility
12 will commence commercial operation by and be
13 delivering power to the facility's busbar by 2016.
14 To assist in the preparation of its report, the
15 Commission, in consultation with the Agency, may
16 hire one or more experts or consultants, the costs
17 of which shall be paid for by the owner of the
18 initial clean coal facility. The Commission and
19 Agency may begin the process of selecting such
20 experts or consultants prior to receipt of the
21 facility cost report.

22 (iii) General Assembly approval. The proposed
23 sourcing agreements shall not take effect unless,
24 based on the facility cost report and the
25 Commission's report, the General Assembly enacts
26 authorizing legislation approving (A) the

1 projected price, stated in cents per kilowatthour,
2 to be charged for electricity generated by the
3 initial clean coal facility, (B) the projected
4 impact on residential and small business
5 customers' bills over the life of the sourcing
6 agreements, and (C) the maximum allowable return
7 on equity for the project; and

8 (iv) Commission review. If the General
9 Assembly enacts authorizing legislation pursuant
10 to subparagraph (iii) approving a sourcing
11 agreement, the Commission shall, within 90 days of
12 such enactment, complete a review of such sourcing
13 agreement. During such time period, the Commission
14 shall implement any directive of the General
15 Assembly, resolve any disputes between the parties
16 to the sourcing agreement concerning the terms of
17 such agreement, approve the form of such
18 agreement, and issue an order finding that the
19 sourcing agreement is prudent and reasonable.

20 The facility cost report shall be prepared as follows:

21 (A) The facility cost report shall be prepared by
22 duly licensed engineering and construction firms
23 detailing the estimated capital costs payable to one or
24 more contractors or suppliers for the engineering,
25 procurement and construction of the components
26 comprising the initial clean coal facility and the

1 estimated costs of operation and maintenance of the
2 facility. The facility cost report shall include:

3 (i) an estimate of the capital cost of the core
4 plant based on one or more front end engineering
5 and design studies for the gasification island and
6 related facilities. The core plant shall include
7 all civil, structural, mechanical, electrical,
8 control, and safety systems.

9 (ii) an estimate of the capital cost of the
10 balance of the plant, including any capital costs
11 associated with sequestration of carbon dioxide
12 emissions and all interconnects and interfaces
13 required to operate the facility, such as
14 transmission of electricity, construction or
15 backfeed power supply, pipelines to transport
16 substitute natural gas or carbon dioxide, potable
17 water supply, natural gas supply, water supply,
18 water discharge, landfill, access roads, and coal
19 delivery.

20 The quoted construction costs shall be expressed
21 in nominal dollars as of the date that the quote is
22 prepared and shall include (1) capitalized financing
23 costs during construction, (2) taxes, insurance, and
24 other owner's costs, and (3) an assumed escalation in
25 materials and labor beyond the date as of which the
26 construction cost quote is expressed.

1 (B) The front end engineering and design study for
2 the gasification island and the cost study for the
3 balance of plant shall include sufficient design work
4 to permit quantification of major categories of
5 materials, commodities and labor hours, and receipt of
6 quotes from vendors of major equipment required to
7 construct and operate the clean coal facility.

8 (C) The facility cost report shall also include an
9 operating and maintenance cost quote that will provide
10 the estimated cost of delivered fuel, personnel,
11 maintenance contracts, chemicals, catalysts,
12 consumables, spares, and other fixed and variable
13 operations and maintenance costs.

14 (a) The delivered fuel cost estimate will be
15 provided by a recognized third party expert or
16 experts in the fuel and transportation industries.

17 (b) The balance of the operating and
18 maintenance cost quote, excluding delivered fuel
19 costs will be developed based on the inputs
20 provided by duly licensed engineering and
21 construction firms performing the construction
22 cost quote, potential vendors under long-term
23 service agreements and plant operating agreements,
24 or recognized third party plant operator or
25 operators.

26 The operating and maintenance cost quote

1 (including the cost of the front end engineering
2 and design study) shall be expressed in nominal
3 dollars as of the date that the quote is prepared
4 and shall include (1) taxes, insurance, and other
5 owner's costs, and (2) an assumed escalation in
6 materials and labor beyond the date as of which the
7 operating and maintenance cost quote is expressed.

8 (D) The facility cost report shall also include (i)
9 an analysis of the initial clean coal facility's
10 ability to deliver power and energy into the applicable
11 regional transmission organization markets and (ii) an
12 analysis of the expected capacity factor for the
13 initial clean coal facility.

14 (E) Amounts paid to third parties unrelated to the
15 owner or owners of the initial clean coal facility to
16 prepare the core plant construction cost quote,
17 including the front end engineering and design study,
18 and the operating and maintenance cost quote will be
19 reimbursed through Coal Development Bonds.

20 (5) Re-powering and retrofitting coal-fired power
21 plants previously owned by Illinois utilities to qualify as
22 clean coal facilities. During the 2009 procurement
23 planning process and thereafter, the Agency and the
24 Commission shall consider sourcing agreements covering
25 electricity generated by power plants that were previously
26 owned by Illinois utilities and that have been or will be

1 converted into clean coal facilities, as defined by Section
2 1-10 of this Act. Pursuant to such procurement planning
3 process, the owners of such facilities may propose to the
4 Agency sourcing agreements with utilities and alternative
5 retail electric suppliers required to comply with
6 subsection (d) of this Section and item (5) of subsection
7 (d) of Section 16-115 of the Public Utilities Act, covering
8 electricity generated by such facilities. In the case of
9 sourcing agreements that are power purchase agreements,
10 the contract price for electricity sales shall be
11 established on a cost of service basis. In the case of
12 sourcing agreements that are contracts for differences,
13 the contract price from which the reference price is
14 subtracted shall be established on a cost of service basis.
15 The Agency and the Commission may approve any such utility
16 sourcing agreements that do not exceed cost-based
17 benchmarks developed by the procurement administrator, in
18 consultation with the Commission staff, Agency staff and
19 the procurement monitor, subject to Commission review and
20 approval. The Commission shall have authority to inspect
21 all books and records associated with these clean coal
22 facilities during the term of any such contract.

23 (6) Costs incurred under this subsection (d) or
24 pursuant to a contract entered into under this subsection
25 (d) shall be deemed prudently incurred and reasonable in
26 amount and the electric utility shall be entitled to full

1 cost recovery pursuant to the tariffs filed with the
2 Commission.

3 (e) The draft procurement plans are subject to public
4 comment, as required by Section 16-111.5 of the Public
5 Utilities Act.

6 (f) The Agency shall submit the final procurement plan
7 to the Commission. The Agency shall revise a procurement
8 plan if the Commission determines that it does not meet the
9 standards set forth in Section 16-111.5 of the Public
10 Utilities Act.

11 (g) The Agency shall assess fees to each affected
12 utility to recover the costs incurred in preparation of the
13 annual procurement plan for the utility.

14 (h) The Agency shall assess fees to each bidder to
15 recover the costs incurred in connection with a competitive
16 procurement process.

17 (Source: P.A. 95-481, eff. 8-28-07; 95-1027, eff. 6-1-09;
18 96-159, eff. 8-10-09.)

19 Section 99. Effective date. This Act takes effect upon
20 becoming law."